

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL DIDOMENICO and U.S. POSTAL SERVICE,  
CAMDEN ANNEX, Pennsauken, NJ

*Docket No. 03-1260 Submitted on the Record;  
Issued August 27, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to more than a 17 percent permanent impairment of his right lower extremity for which he received a schedule award.

On November 6, 1998 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim alleging that on November 3, 1998 he hurt his right knee. Appellant stated that he walked off steps onto a brick walkway that had missing bricks and "took a bad step."

By letter dated November 19, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for right meniscus tear with right knee joint effusion and authorized arthroscopic surgery, which was performed on November 24, 1998.

On November 14, 2001 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a September 18, 2001 report of Dr. David Weiss, a Board-certified orthopedic surgeon, who provided a history of appellant's November 3, 1998 employment injury, medical treatment, and family and social background. He also provided his findings on physical examination and noted a review of appellant's medical records. Regarding appellant's right knee, Dr. Weiss diagnosed post-traumatic internal derangement, a tear of the lateral meniscus, post-traumatic synovitis, post-traumatic chondromalacia, status post arthroscopic surgery consisting of partial lateral meniscectomy, status post partial synovectomy involving the anterolateral compartment and anteromedial compartment, status post chondral shaving of medial tibial plateau and medial femoral condyle and status post diagnostic arthroscopy with joint debridement. He opined that the November 3, 1998 employment injury was a competent producing factor for appellant's subjective and objective findings. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Weiss determined that appellant had a five percent impairment for right patellofemoral pain/crepitation based on Table 17-31, page 544. He found that appellant had a 17 percent impairment for 3/5 right quadriceps muscle weakness (knee extension) based on Table 17-8, page 532. He determined that appellant had a 21 percent impairment for the combined right

lower extremity and a 3 percent impairment for a pain-related impairment. Dr. Weiss concluded that appellant had a total impairment of 24 percent of the right lower extremity.

On September 18, 2001 an Office medical adviser reviewed Dr. Weiss' findings. Utilizing the fifth edition of the A.M.A., *Guides*, the Office medical adviser stated that Dr. Weiss' finding of 17 percent permanent impairment for muscle strength was correct based on Table 17-8, page 532. The Office medical adviser noted that an impairment rating for pain and crepitation could not be given based on Table 17-2, page 526.

By decision dated February 8, 2002, the Office granted appellant a schedule award for a 17 percent permanent impairment for the loss of use of his right lower extremity based on the Office medical adviser's opinion. In a February 19, 2002 letter, appellant, through his attorney, requested an oral hearing before an Office representative.

By decision dated January 16, 2003, the hearing representative found that appellant was not entitled to an additional schedule award based on the Office medical adviser's opinion.

The Board finds that appellant is not entitled to more than a 17 percent permanent impairment of his right lower extremity, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*, has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

In this case, the Office relied on the Office medical adviser's opinion in finding that appellant did not have more than a 17 percent impairment of the right lower extremity. The Office medical adviser utilized Table 17-8, page 532 of the A.M.A., *Guides*, to determine that appellant had a 17 percent impairment of the right lower extremity.

The Board has reviewed the calculations of the Office medical adviser and finds that he properly calculated appellant's impairment of the right lower extremity pursuant to tables of the fifth edition of the A.M.A., *Guides*, and properly concluded that appellant had a 17 percent impairment of the right lower extremity.

The Board finds that Dr. Weiss' report does not comport with the instructions found in the A.M.A., *Guides*. In finding that appellant had a 24 percent impairment of the right lower extremity, Dr. Weiss calculated an impairment rating of 5 percent for right patellofemoral pain/crepitation based on Table 17-31, page 544 while utilizing Table 17-8, page 532 to

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404(1999).

determine that appellant had a 17 percent impairment for muscle weakness of the knee extension. The cross-usage chart, Table 17-2, page 526, indicates which methods and resulting impairments may be combined. This chart indicates that impairment ratings derived from muscle strength cannot be combined with arthritis (degenerative joint disease) in evaluating a single impairment. Notwithstanding this instruction, Dr. Weiss utilized Table 17-31 regarding arthritis impairments and Table 17-8, page 532 concerning muscle weakness in determining the extent of appellant's impairment of the right lower extremity. As Dr. Weiss did not properly use the A.M.A., *Guides*, in determining that appellant had a 24 percent impairment of the right lower extremity, there is no medical evidence of record correctly based on the A.M.A., *Guides*, establishing that appellant has more than a 17 percent permanent impairment of the right lower extremity.

The January 16, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 27, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member